

August 10, 2022

VIA ECF

The Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *Nypl, et al. v. JPMorgan Chase & Co., et al.*, Case No. 1:15-cv-9300 (LGS)

Dear Judge Schofield:

Pursuant to this Court's August 8, 2022 Order (ECF No. 800), we write to respectfully respond to plaintiffs' pre-motion letter dated Saturday, August 6, 2022, requesting leave to file a "letter motion to take the deposition of Dr. Strombom [Defendants' expert witness], on or before August 17, 2022." (ECF No. 799, at 1.) Consistent with Your Honor's statement at the June 29, 2022 pre-motion conference and the Court's June 30, 2022 Order (ECF No. 792), it is defendants' position that no further expert depositions are permitted and the parties should proceed to briefing defendants' motion for summary judgment on the schedule set by the Court (ECF No. 796) without delay.

As background, defendants served Dr. Strombom's report—the only report he submitted in this case—when they opposed plaintiffs' class certification motion on March 4, 2021. Plaintiffs deposed Dr. Strombom concerning the opinions set forth in that report on April 21, 2021. This Court denied plaintiffs' motion to exclude Dr. Strombom's opinions on March 18, 2022. (ECF No. 776.) In a letter to this Court dated May 23, 2022, defendants stated that they intend to rely on Dr. Strombom's March 4, 2021 report to oppose the merits of plaintiffs' case and do not intend to supplement it.¹

On June 29, 2022, this Court held a telephonic pre-motion conference on defendants' anticipated motion for summary judgment. At the end of that conference, plaintiffs' counsel suggested that, after making plaintiffs' anticipated rebuttal expert disclosure on July 18, 2022, the parties should have an opportunity to take further expert depositions. This Court disagreed and stated that it was "not going to allow" new depositions of experts who have not supplemented their prior reports. This Court subsequently entered a schedule for defendants'

¹ Plaintiffs incorrectly insist that defendants failed to designate Dr. Strombom's merits testimony by the June 17, 2022 deadline. (ECF No. 799, at 1.) This misstatement was already dispatched by the Court at the June 29 conference because defendants' May 23, 2022 letter had made clear on the record that they would be relying on Dr. Strombom's previously offered opinions. (See ECF No. 785, at 1 ("Defendants do not intend to rely at the merits stage upon any new experts or opinions beyond those previously disclosed by Dr. Bruce Strombom, which Plaintiffs fully interrogated and attempted to rebut at the class certification stage.").)

summary judgment motion. (ECF No. 796.) Plaintiffs now again seek leave to take another deposition of Dr. Strombom, even though they “accept the representations made by all of the counsel for the Defendants” that this Court already stated further depositions would not be permitted. (ECF No. 799 at 2.)

Plaintiffs’ renewed request to depose Dr. Strombom is a belated, and unjustified motion for reconsideration of the Court’s oral ruling at the June 29, 2022 conference. Nothing material has changed since that conference. Although plaintiffs served a reply expert report, defendants have not sought to supplement the opinions of Dr. Strombom. And plaintiffs are not entitled—and proffer no authority suggesting they are entitled—to a *second* deposition of Dr. Strombom on the *same* March 4, 2021 report. That report still contains the only opinions Dr. Strombom has disclosed in this case.

Plaintiffs’ purported concern about “surprise at the trial or in any motion for summary judgment” is misplaced. Because Dr. Strombom has not disclosed any opinions after March 4, 2021, defendants do not intend to rely on any such new opinions in their summary judgment motion. And should Dr. Strombom offer any improper undisclosed opinion at trial, plaintiffs can object at that time (and defendants, of course, reserve all rights to oppose such an objection). But until Dr. Strombom offers additional opinions, plaintiffs have nothing more to depose him about.

At this juncture, an additional deposition of Dr. Strombom will only serve to add cost and delay to the resolution of claims whose value is plainly far below the cost of litigation, as this Court noted (and plaintiffs conceded) at the June 29 conference. Accordingly, defendants respectfully submit that plaintiffs be denied leave to again depose Dr. Strombom (a request this Court had already rejected at the June 29 conference).

Defendants are available to answer any questions this Court may have and reserve all rights.

Respectfully submitted,

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Plaintiffs' motion to compel a second deposition of Defendants' expert Dr. Strombom is DENIED as moot.

The Clerk of Court is respectfully directed to close the motions at Dkt. Nos. 799 and 802.

Dated: August 11, 2022
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE